

**FILED**

**NOV 20 2007**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAMONTE DESHAWN SIMS,

Defendant - Appellant.

No. 05-50692

D.C. No. CR-02-000241-TJH-3

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., Senior District Judge, Presiding

Submitted October 22, 2007<sup>\*\*</sup>

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Lamonte Deshawn Sims appeals from the 120-month sentence imposed following this court's remand to allow the district court to exercise its discretion under *United States v. Booker*, 543 U.S. 220 (2005). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Sims contends that his sentence is unreasonable because the district court imposed an unwarranted and disparate sentence when it based his sentence on physical restraint of an individual to facilitate commission of the offense. *See* U.S.S.G. § 2B3.1(b)(4)(B). This disparity is unwarranted, he contends, because a codefendant who actually restrained the individual did not receive an upward adjustment on this basis. Because the record reflects that the sentencing judge explained the sentence with regard to the statutory factors and correctly applied the adjustment, we cannot conclude that the sentence is unreasonable. *See United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir.), *cert. denied sub nom. Acosta-Franco v. United States*, 127 S. Ct. 309 (2006); *United States v. Plouffe*, 445 F.3d 1126, 1131-32 (9th Cir.), *cert. denied*, 126 S. Ct. 2314 (2006).

**AFFIRMED.**